

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Bay State Gas Company

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) **D.T.E. 05-27**
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ATTORNEY GENERAL'S MOTION FOR RECONSIDERATION

I. INTRODUCTION

Pursuant to 220 C.M.R. § 1.11 (10) and Department of Telecommunications and Energy (“Department”) precedent, the Attorney General seeks reconsideration of the Department’s November 30, 2005 decision allowing the Bay State Gas Company (“Bay State” or “Company”) to recover the costs of retired METSCAN meter reading devices.

The Department allowed Bay State Gas to include \$13,216,748 in METSCAN charges in its distribution rates. The Company sought the recovery of the test-year end undepreciated balance of \$3,121,366 of retired meter reading devices and an additional \$10,095,382 in future lease payments for retired METSCAN meter reading devices. The METSCAN devices are not now in service. At the same time, however, the Company requested, and the Department approved, the recovery from customers of the costs of the leases for the new ITRON devices used to replace the retired METSCAN devices. Thus, customers are paying twice for meter reading service, once for the new ITRON lease payments and a second time for payments associated with METSCAN devices that have been long ago retired. Order, pp. 197-200. To avoid these duplicate charges to customers, the Department should reconsider its Order and deny recovery of the METSCAN costs.

II. STANDARD OF REVIEW

The Department may grant a motion for reconsideration if its treatment of an issue was the result of mistake or inadvertence. *Massachusetts Electric Company*, D.P.U. 90-261-B, p. 7 (1991). The Department also may grant reconsideration of previously decided issues when extraordinary circumstances dictate that the Department take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. *North Attleboro Gas Company*, D.P.U. 94-130-B, p. 2 (1995); *Boston Edison Company*, D.P.U. 90-270-A, pp. 2-3 (1991). A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact on the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. *Commonwealth Electric Company*, D.P.U. 92-3C-1A at 3-6 (1995).

III. ARGUMENT

A. The Department Should Correct The Double Counting Of Metering

The Department has characterized the double counting of expenses as “patently unfair,” and rejected a requirement that customers pay for both new equipment and old equipment it replaced. *Western Massachusetts Electric Company*, D.P.U. 85-270, pp. 180-183 (1986) (reducing rate base to reflect retirement of company owned vehicles). The Company’s replacement of year end METSCAN reading devices with the ITRON devices it now uses is analogous to Western Massachusetts Electric Company’s treatment of vehicle lease expense in D.P.U. 85-270. The Department, however, failed in its Order to distinguish between Bay State’s

request for double-counting of meter reading devices from the Department's rejection of similar costs for Western Massachusetts Electric Company. Reasoned consistency requires the Department to explain its decision to allow the Company to charge customers twice for the same service in this proceeding, after it found the same proposed treatment of costs "patently unfair" in another case and denied recovery. *Boston Gas Co. v. Department of Public Utilities*, 367 Mass. 92, 104 (1975) (discussing reasoned consistency). If the Department permits the double recovery to continue, it must explain: 1) the application of the used and useful standard, typically used for rate base property the Company owns, to the METSCAN lease payments for property that Bay State does not own and, in most cases, retired from service, *Fitchburg Gas and Electric Light Company v. Department of Public Utilities*, 371 Mass. 881, 886-87 (1977); and 2) the finding that the future METSCAN payments lease payments are recoverable "investments" since the Company did not include these leases as assets, plant in service or otherwise on its 2004 Annual Return to the Department.¹ The Department, therefore, should reconsider its Order, whether in recognition of inadvertence, mistake or by taking a fresh look at the evidence, and eliminate the double counting of meter costs.²

¹ The Department treats lease payments as an expense. *NYNEX*, D.P.U. 94-50, pp. 436-437 (1995). The Department has never before treated the net present value of future lease payments as a rate base item.

² If the Department continues to allow recovery of the METSCAN lease payments as though they were investment, Order, pp. 197-200, the Department should add the implied debt liability of the associated leases to the Company's capital structure. The Department must recognize the net present value of the liability of this lease, and all other leases on the Company's books, as part of the Company's capital structure to show the reduction in the overall cost of capital implied by the use of leases as financing vehicles.

IV. CONCLUSION

The Department should adopt the recommendations of the Attorney General in the best interests of customers.

Respectfully Submitted,

THOMAS F. REILLY

By: _____

Alexander J. Cochis
Assistant Attorney General
Utilities Division
One Ashburton Place,
Boston, MA 02108 - 1598
(p) (617) 727-2200 ext. 2406
(f) (617) 727- 1047

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